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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. [redacted] 55

MARGUERITE LORETTA ALDRICH,
Petitioner,

vs.

WILLIAM T. ALDRICH, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

PETITIONER'S BRIEF

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No. 737

MARGUERITE LORETTA ALDRICH,
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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

PETITIONER'S BRIEF

I

OPINION

The opinion of the Supreme Court of Appeals of West Virginia is reported in 127 S. E. 2d 385. It appears in the printed record at pages 41-65. The opinion of the Circuit Court of Putnam County is on page 37 of the printed record.

II

JURISDICTION

Jurisdiction of this Court to review the judgment of the

Supreme Court of Appeals of West Virginia is invoked under Article 4 Section 1 of the Constitution of the United States.

Judgment of the Supreme Court of Appeals of West Virginia was entered on October 22, 1962. Petition for writ of certiorari was filed with this Court on January 10, 1963. This Court granted certiorari on April 15, 1963. ..... U. S. ....., 10 L. ed. 2d 128, ... S. Ct. ..... (R. 68).

III

CONSTITUTIONAL PROVISION INVOLVED

This action involves Article 4, Section 1 of the Constitution of the United States which reads as follows:

> "Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and proceedings shall be proved, and the Effect thereof."

IV

QUESTIONS PRESENTED

The questions presented in this case are:

1. Whether the final judgment of the Circuit Court of Dade County, Florida, entered in the case of Marguerite Loretta Aldrich vs. M. S. Aldrich on May 31, 1945, as amended on June 5, 1945, will be enforced in the courts of West Virginia.

2. Whether the judgment of the Florida court is entitled to full faith and credit in the State of West Virginia under Article 4, Section 1 of the Constitution of the United States.

3. Whether the courts of West Virginia may review the judgment of the Florida court and pass on whether that Court decided the case correctly.

V

STATEMENT OF THE CASE

This is the aftermath of a divorce suit tried in the Circuit Court of Dade County, Florida, in which the petitioner, Marguerite Loretta Aldrich, was plaintiff and M. S. Aldrich was defendant. Both parties were before the court and the case appears to have been bitterly contested. No jurisdictional question was raised as to the subject matter or the parties in the court below and no such question is presented to this Court.

The petitioner and M. S. Aldrich were married in 1918. Differences arose between them following which they were divorced in Dade County, Florida, on May 31, 1945. This decree, a copy of which is in the case as "Plaintiff's Exhibit A" awarded alimony to the petitioner in the sum of $250.00 per month so long as she lived and made the same a charge against the estate of M. S. Aldrich in the event of his death: This part of the decree reads as follows:

"4. That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff, Marguerite Loretta Aldrich, the monthly sum of $250.00 as and for her permanent alimony, said sum to be paid to her monthly at the office of the Clerk of the Circuit Court of Miami, Dade County, Florida, and in the event the defend-

ant, Moriel Simeon Aldrich, shall predecease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250.00 shall, upon the death of said defendant, become a charge upon his estate during her lifetime; and this Court retains jurisdiction in respect thereto;". (R. 16).

On June 5, 1945, M. S. Aldrich petitioned the Circuit Court of Dade County for a rehearing which was denied. The Court, however, reduced the alimony from $250.00 to $215.00 per month. See "Plaintiff's Exhibit B." (R. 18).

M. S. Aldrich died testate on May 29, 1958, while a resident of Putnam County, West Virginia. His last will and testament was duly probated and the estate was put in line for settlement. The petitioner filed a claim for alimony which accrued after his death.

M. S. Aldrich, at the time of his death, owed no alimony to the petitioner, he having kept his payments current. Before terminating his earthly pilgrimage he prepared for this event by transferring practically all of his property to his son the defendant, William T. Aldrich. Although reputed to be a man of wealth, the appraisals of his estate showed assets in the amount of only $7,283.50, which was inadequate to meet future obligations of the Florida divorce decree. (R. 20-22).

The petitioner filed this action in the Circuit Court of Putnam County, West Virginia, for the purpose of having her rights determined and having certain allegedly fraudulent transfers and conveyances made by M. S. Aldrich to his son, William T. Aldrich, and a corporation known as Aldrich-Slicer Company, set aside and the assets put back in the estate of M. S. Aldrich so that funds would be available for future payments of alimony. She predicated her claim on the Florida divorce.

William T. Aldrich is the son of M. S. Aldrich and the petitioner. Natalie Aldrich is the wife of William T. Ald-

rich. Angela Aldrich is the widow of M. S. Aldrich. M. S. Aldrich & Associates, Inc., is a corporation which was principally, if not solely, owned by M. S. Aldrich during his lifetime or until a short time prior to his death. Aldrich-Slicer Company is a corporation organized by William T. Aldrich. John C. White is executor of the M. S. Aldrich estate.

The petitioner charged that M. S. Aldrich, prior to his death, transferred a lucrative insurance business to his son, William T. Aldrich, one of the defendants herein, and to Aldrich-Slicer Company, a corporation, owned by his son, and thereby rendered his estate unable to meet the alimony payments which fell due and were to accrue after his death. She also charged that he owned a farm in Putnam County, title to which he had put in his son, Edwin M. Aldrich, in 1942, and which had been conveyed by Edwin to William T. Aldrich, in 1946. (R. 24-26). Both deeds were executed without consideration. She prayed that these transfers and conveyances be set aside and an accounting made. An answer was filed by William T. Aldrich in which he denied the fraudulent charges.

The defendants with the exception of Angela Aldrich, who had not made an appearance in the case, filed a motion for judgment on the pleadings. In order that the legal propositions might be determined with as little expense as possible, a stipulation was entered into and filed setting out that no alimony was owed at the time of the death of M. S. Aldrich. It was also stipulated that there was no constructive or actual fraud in the conveyance of the Putnam County real estate. It was contended by the petitioner that despite the conveyances, the real estate was actually owned by M. S. Aldrich at the time of his death and she so charged in her complaint.

The Circuit Court of Putnam County held that the decree

of the Florida court was invalid and unenforceable in so far as it attempted to impose an obligation to pay alimony on the estate of M. S. Aldrich. (R. 37). An appeal was awarded by the Supreme Court of Appeals of West Virginia to this judgment. Upon a hearing in that Court the judgment was affirmed with one of the four members filing a vigorous dissent.

The reason assigned by the Supreme Court of Appeals of West Virginia in the majority opinion for not enforcing the Florida decree was that the Florida court erred in rendering the judgment in so far as it made the petitioner's alimony a charge against the estate of M. S. Aldrich after his death. This means that a West Virginia court may review the merits of a judgment of a sister state and refuse to enforce it, providing, in its opinion, the court of the sister state erred in its interpretation of the law. This means that the courts of West Virginia will not give full faith and credit to the judicial proceedings of other states.

VI

POINTS ARGUED IN THIS BRIEF

1. Full faith and credit should be accorded to the Florida judgment.

2. Florida courts hold that alimony may be made a charge against a husband's estate.

3. The Florida judgment in question is not repugnant to the policy or laws of West Virginia since like decrees may be entered and enforced by the courts of this State.

4. The questions raised are of great general and public interest.

VII

ARGUMENT

1. Full faith and credit should be accorded to the Florida judgment.

An excellent statement of the general law relating to this point is found in Volume 30A Am. Jur. Section 239 on Judgments which reads as follows:

> "Conclusiveness and Effect.—The full faith and credit clause has established throughout the federal system the common-law principle that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered. A judgment of a sister state is conclusive as to the nature and amount of the claim upon which it was based. Thus, under the full faith and credit clause of the Constitution of the United States, a judgment rendered by a court of one state is, in the courts of another state of the Union, binding and conclusive as to the merits adjudicated. It is improper to permit an alteration, modification, or reexamination of the judgment, or of the grounds on which it is based, or of the merits of the original cause of action. Thus, jurisdiction to render the judgment having been established or being presumed, the full faith and credit clause precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles upon which the judgment is based. Whatever mistake of law may underlie a judgment, it is, under the full faith and credit clause, conclusive as to all the media concludendi. The general rule is that if the judgment has locally the faith and credit of evidence of the highest nature, that

is to say conclusive evidence, it must have the same faith and credit in every other court, and in this respect it has been declared that where a defendant has had full notice, the judgment is presumed to be conclusive in the state of its rendition. However, if a judgment is not conclusive in the state of its rendition, it is equally inconclusive in another state.

"A valid judgment rendered in one state will be recognized in another state as imposing upon the party against whom it was rendered a duty to obey the judgment, or as determining interest in a thing or in the status of the parties. However, no execution can issue directly upon a foreign judgment, but such judgment must be sued upon like any other debt. A foreign judgment cannot of its own force create any lien upon property in a state other than that of its rendition."

The case of *Milliken* vs. *Meyer*, reported in 311 US. 457, 312 US 712, 85 L. ed. 269, 61 S. Ct. 339, 548, 132 ALR 1357, deals with the proposition of whether full faith and credit shall be given by the courts of one state to the judgment of a sister state. In this case one W. B. Milliken instituted an action in the State of Wyoming against Violet L. Meyer individually and as Administratrix of the Estate of R. D. Meyer, praying for an accounting of certain profits in an old development venture. Meyer, who was a resident of Wyoming, was served personally with process in accordance with a statute while outside the State. The Wyoming court rendered a judgment in favor of Milliken who later brought an action on the judgment in the State of Colorado. The Supreme Court of the State of Colorado held that judgment of the Wyoming Court was null and void because of an irreconcilable contradiction between the findings and the decree. This court granted a writ of certiorari to the

Colorado court. In reversing the judgment of that court it was said:

> "Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry. Grover & B. Sewing Mach. Co. v. Radcliffe, 137 US 287, 34 L. ed. 670, 11 S. Ct. 92; Adam v. Saenger, 303 US 59, 82 L. ed. 649, 58 S. Ct. 454. But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself.' Adam v. Saenger, supra (303 US at p. 62, 82 L. ed. 651, 58 S. Ct. 454). In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. Fauntleroy v. Lum, 210 US 230, 52 L. ed. 365, 48 S. Ct. 142, 53 ALR 1141; Titus v. Wallick, 306 US 282, 83 L. ed. 653, 59 S. Ct. 557. Whatever mistakes of law may underlie the judgment (Cooper v. Reynolds, 10 Wall. (US) 308, 19 L. ed. 931) it is 'conclusive as to all the media concludendi.' Fauntleroy v. Lum, supra (210 US at p. 237, 52 L. ed. 1012, 28 S. Ct. 641.)"

This Court in *Johnson* vs. *Muelberger*, 71 S. Ct. 474, 340 US 580, 95 L. ed. 552, considered the right of the courts of New York to modify or nullify a Florida divorce decree. In that case a widower by the name of Johnson married a second time. This new wife brought an action for divorce in the State of Florida in which he appeared and made an unsuccessful defense. He subsequently remarried. While a resident of New York, he died and left his entire estate to his daugh-

ter. His third wife renounced the will and claimed a third of the estate. The daughter charged that the divorce from the second wife in Florida was illegal and consequently the third marriage was void. In dealing with her contention this Court said:

> "We conclude that Florida would not permit Mrs. Muelberger to attack the Florida decree of divorce between her father and his second wife as beyond the jurisdiction of the rendering court. In that case New York cannot permit such an attack by reason of the Full Faith and Credit Clause. When a divorce cannot be attacked for lack of jurisdiction by parties actually before the court or strangers in the rendering state, it cannot be attacked by them anywhere in the Union. The Full Faith and Credit Clause forbids."

A very potent statement of the law relating to the effect of Article 4, Section 1 of the Constitution is found in *Sherrer* vs. *Sherrer*, reported in 68 S. Ct. 1087, 334 U. S. 343, 92 L. ed. 1055 1 ALR 2d 1355, at 1363. This case deals with the duty of the Massachusetts court to respect a Florida divorce decree. The husband had appeared in the case and made an unsucces-ful attempt to contest it. In holding that the Massachusetts court should respect the results of the Florida decree, this court speaking through Chief Justice Vinson said:

> "x x x Nor do we understand the decisions of this Court to support the propo ition that the obligation imposed by Article 4, § 1 of the Constitution and the Act of Congress passed thereunder, amounts to something less than the duty to accord full faith and credit to decrees of divor e entered by courts of sister States. The full faith and credit clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggrega-

> tion of independent, sovereign States into a nation. If in its application local policy must at times be required to give way, such 'is part of the price of our federal system.' Williams v. North Carolina, 317 US 287, 302, 87 L. ed. 279, 288, 63 S. Ct. 207, 143 ALR 1273 (1942)."

We respectfully submit that the Supreme Court of West Virginia cannot rightfully undermine a judgment of a sister state on grounds not cognizable in the state where the judgment was rendered. We say not cognizable because no court sitting in the State of Florida could now invalidate the decree of the Circuit Court of Dade County entered on June 5, 1945, or refuse to enforce it. That decree settled the rights of the parties once and for all and became final when not appealed from. It barred all future litigation and settled not only the issues raised at the trial but all issues which could have been raised. The West Virginia Court was, therefore, powerless to retry the case.

The Supreme Court of Appeals of West Virginia prior to the ruling complained of adhered to Article 4, Section 1 of the Constitution of the United States by giving full faith and credit to the judgments of sister states. An able pronouncement of this rule was made in *Stewart* vs. *Stewart*, 27 W. Va. 167. That case dealt with a decretal judgment by the Court of Common Pleas of Columbiana County, Ohio, for alimony in a suit brought by a wife against her husband in which a divorce was not prayed for and not granted. The plaintiff, wife, undertook to enforce this decree in the Circuit Court of Hancock County, West Virginia, against a tract of land owned by the defendant. The defense interposed was that the Courts of West Virginia could not enter a judgment for alimony unless the same was supported by a

decree of divorce. In disposing of this matter, the court on page 173 of the opinion said:

"But it is not on the ground that such suits have been maintained in many States, that we would enforce a decree for such cause in our own courts, nor would we sustain it because it agreed with our policy, nor refuse to enforce it here because it is hostile to our policy. The reason why we would enforce a decree, rendered by a court of competent jurisdiction in another State, is the fact that the Constitution of the United States requires us to do so. For the wisest purposes the States when they formed and adopted the Constitution of the United States provided in Section 1 of Article IV: 'Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. If this clause had not been inserted in the Constitution and rigidly enforced by the judiciary in all the States, our relations as States to each other would have been anything but harmonious. Citizens by passing from one State to another could escape the effect of their contracts and obligations. It is not a question of State policy, whether we will or will not give effect to the judgments of courts of competent jurisdiction of other States. It is a question, whether we will in good faith live up to the constitutional obligations, which we have assumed. In Gilchrist v. W. Va. O. & O. L. Co., 21 W. Va. 115, we decided, that where a judgment rendered in another State is sought to be enforced in a court in this State, our courts may inquire into the jurisdiction of the court, which rendered it, and if it appear that the court, which rendered the judgment, had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, it is valid and binding in this State; that in deciding what effect

> a judgment rendered in another State is to have in this, it must be regarded as well settled, that it must have the same effect here, as it had in the State, where it was rendered. It is not an open question, whether we will enforce the judgments and decrees of another state rendered by courts of competent jurisdiction having jurisdiction to render such judgment or decree. The general rule is, as we have stated it, if there are any exceptions, I have not been able to find them. I do not say there can be none. If the court of common pleas of Columbiana County had jurisdiction to pronounce the decree rendered there, and sought to be enforced here, we must give full faith and credit to it and enforce it here."

This holding is buttressed by a long line of cases decided since that time among which are *Campbell* vs. *Switzer*, 82 S. E. 319, 74 W. Va. 509; *Wells-Stone Mercantile Co.*, vs. *Truax*, 29 S. E. 1006, 44 W. Va. 531; *Crumlish's Admr.* vs. *Central Improvement Co.*, 18 S. E. 456, 38 W. Va. 390; *Sayre's Adm'r* vs. *Harpold*, 11 S. E. 16 33 W. Va. 553; *Grinrod Process Company* vs. *Rothwell*, 189 S. E. 100, 117 W. Va. 709; *Pukas* vs. *Pukas*, 42 S. E. 2d 11, 129 W. Va. 765; *Gavenda Bros.* vs. *Elkins Limestone* (W. Va.), 116 S. E. 2d 910; and *Bennett* vs. *Bennett*, 70 S. E. 2d 894, 137 W. Va. 179.

2. *Florida courts hold that alimony may be made a charge against a husband's estate.*

The case of *Johnson* vs. *Every*, (Florida), 93 So. 2d 390, appears to settle this question. This was a proceeding brought by a divorced wife for a post decretal order requiring the ancillary administrator of the estate of the deceased former husband to pay alimony which accrued under a divorce decree and property settlement. The decree of di-

vorce provided for payments until death or remarriage of the wife and the payments in controversy accrued after the husband's death. In disposing of this matter the Florida court said:

> "We subscribe to the proposition that in the absence of an express contract or a provision in a decree such as the one before us, a divorced husband's liability for alimony terminates with his death. On the other hand where the decree or property settlement agreement expressly provides for the continuance of the payments 'until death of the wife' then the husband's estate remains liable for the obligation in the same manner as it is liable for any other legitimate obligation outstanding at the time of his death. Here there was a provision in the final decree as well as in the property settlement agreement to the effect that the payments would be made during the life of the wife or until she remarried. She is still living and she is not remarried, and consequently, the conditions for the termination of the weekly payments have not occurred.
>
> "This was in effect a part of our holdings in Underwood vs. Underwood, 64 Southern 2d 281; and Allen vs. Allen, 111 Fla., 733, 150 S. E. 237, 238. In the last case cited, we held: 'As a general rule the obligation to pay alimony dies with the person, but the agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this State.'"

You will note that the disjunctive "or" is used. This means that either a contract of settlement or a holding of the court in the divorce decree is sufficient to establish liability on the estate.

Further on in the opinion the court said:

> "While we concur in the view of the trial Chancellor that the alimony payments cannot be increased either retrospectively or prospectively after the death of the husband, we cannot concur in the view that as a matter of law his estate is not liable for the amount fixed by the final decree in a situation such as the one presently before us. See Jennings vs. First National Bank, 116 W. Va. 409, 180 S. E. 772, 100 A. L. R. 494, 500; and 17 Am. Jur. Divorce and Separation, Sec. 733, p. 550."

The holding in *Johnson* vs. *Every*, *supra*, was based on a contract in the nature of a property settlement between the husband and wife, executed during a suit for divorce. The husband agreed to pay the wife alimony in the amount of twenty-five dollars per week for the duration of her life, to be terminated upon her death or remarriage to any person other than the defendant. This language was incorporated in the decree of divorce. *Nothing was said about enforcing payments against the defendant's estate should he predecease the wife.* He did predecease the wife and she sought to enforce liability against his estate. The primary proposition before the Florida court was the interpretation of the contract and whether the parties intended to bind the husband's estate for payments which might accrue after his death. The court split on the interpretation of the contract, the majority holding that the contract was sufficiently broad to hold the estate liable. The minority said that the parties did not intend to bind the estate. The court, therefore, was dealing with the construction of a contract rather than a legal principle. The court did lay down the proposition that the estate of a deceased husband could be bound for alimony by an express contract or by the provisions of a decree. In the instant case, express provisions were incorporated in

the decree specifically stating that the decedent's estate would be liable for future payments. This shows the intention of the court which fixed the rights of the parties.

We submit that courts in the State of Florida have power to decree alimony payments against a husband. It necessarily follows that the amount and duration is left to the judgment of the courts of that state. If the trial court errs, and we don't concede that the trial court erred in this case, the losing party has his right of appeal through the proper appellate channels. Once that right of appeal is lost it is not within the purview of any court to say what the Florida court should have held. The judgment becomes final as to all parties everywhere.

The majority opinion of the West Virginia court in support of its position cited in the case of *Diegaard* vs. *Diegaard*. (Florida Appellate Court, not the Supreme Court) 114 So. 2d 516. In that case, the trial court awarded alimony in the amount of $75.00 per week to the plaintiff together with a lump sum of $5,000.00 as post demise alimony in the event of the husband's death prior to the remarriage or the death of the wife. The Florida court in deciding this case quoted the statute which provides: "In any award of permanent alimony, the court shall have jurisdiction to award periodic payments *or payment in a lump sum*." Emphasis ours. In dealing with the lump sum award the Florida court said "It has been held that a Chancellor cannot award both periodic alimony payments and lump sum alimony." The statute, as above pointed out, provided that alimony could be either periodic payments or a lump sum payment. The Florida court merely held there was no statutory authority for both. Thus we see that the majority of the West Virginia court cited authority which does not support its position. The same may be said for *Gessler* vs. *Gessler*. 273 Fed. 2d 302 also relied on in the majority opinion of the West Virginia court.

We respectfully submit that a judgment of a court of record in any one of the fifty states of the Union is not open to question in a sister stater povided that the court which rendered the judgment had jurisdiction of the parties and of the subject matter and that the judgment was not procured by fraud.

It is admitted that the Circuit Court of Dade County, Florida, had jurisdiction of the parties and of the subject matter. It is not contended by anybody that there was fraud in procurement of the judgment. These propositions being true, we submit that the judgment cannot be attacked in a West Virginia Court. *Gavenda Bros. Inc.*, vs. *Elkins Lime stone Co., Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; and *Caswell* vs. *Caswell*, 84 W. Va. 575, 100 S. E. 482, and a long line of cases cited in these authorities so hold. The majority of the West Virginia court says the Florida judgment may be attacked. Why? Because the court believes the decision of the Florida court to be wrong. This is a mere supposition since the Supreme Court of Florida has not dealt with a decree exactly like the one in the instant case though it has stated that such a decree is valid. *Johnson* vs. *Every*, 1957, 93 So. 2d 390.

The West Virginia court in the majority opinion said: "When a judgment or decree of a court of another state is sought to be enforced in a court of this state, the court in this state may inquire into the jurisdiction of the court which rendered the judgment or decree, and if it appears that such court had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, the judgment or decree is binding in this state." This is a correct statement of law which is universally accepted. Yet the majority opinion repudiates this proposition in its holding by confusing jurisdiction with the correctness or incorrectness of the decision sought to be

enforced. This we submit cannot be done. Jurisdiction is one thing and a decision on the merits is another.

3. *The Florida judgment in question is not repugnant to the policies or laws of West Virginia since like decrees may be entered and enforced by the courts of this State.*

The case of *Hale* vs. *Hale*, 108 W. Va. 337, 150 S. E. 748, deals with the proposition of whether the Supreme Court of West Virginia, upon decreeing the dissolution of a marriage, may award alimony during the life of the wife. This was a suit for divorce a vinculo matrimonii following a divorce from bed and board in which the wife sought permanent alimony. In point two of the syllabus the court made the following holding:

> "Where a dissolution of a marriage is decreed upon the application of a wife, the court may provide for alimony during the life of the wife, under Code c. 64, section 11."

In the opinion the court said:

> "As a general rule, where a wife granted a divorce a mensa et thoro, her inchoate right of dower and her right to participate in the distribution of her husband's personal estate remaining unimpaired, alimony, if granted, should be only for the joint lives of the parties, or until reconciliation. Henrie v. Henrie, 71 W. Va. 131, 76 S. E. 837. But, where the divorce is to the wife a vinculo matrimonii, and her right to participate in the estate of her husband is cut off, then it is within the power of the trial chancellor to require alimony to be paid to her through her life, that is, to be paid by the husband while living and out of his estate after his death, pro-

> vided the statute of the state is sufficiently broad to cover such contingency. 19 C. J. pp. 278, 279; 1 R. C. L. p. 933; Nelson on Divorce and Separation, vol. 2, p. 880. Our statute, Code c. 64 §11, clothes the chancellor with wide power in making such 'decree as it shall deem expedient, concerning the estate and maintenance of the minor children.' We think this is of sufficient breadth to warrant a requirement by the trial court that permanent alimony may be paid out of a husband's estate after his death, when, in the chancellor's opinion, such course is just and right. See generally Hartigan v. Hartigan, 65 W. Va. 471, 473, 64 S. E. 726, 131 Am. St. Rep. 973, 17 Ann. Cas. 728; Gum v. Gum, 122 Va. 32, 94 S. E. 177. But, since in many instances there cannot be as large alimony paid by a man's estate as he was able to pay in his lifetime, such allowances will be subject to necessary modification as exigencies of the situation may require."

The case of *Jennings* vs. *First National Bank of Williamson*, 116 W. Va. 409, 180 S. E. 772, holds that a decree of divorce providing for alimony during the life of the wife is valid and enforceable when based on a property settlement contract. While this is not controlling on the matter raised in the instant case it does lend force to the proposition that alimony for life, even when it comes out of the deceased husband's estate, is not repugnant to the laws of West Virginia. Therefore, the majority opinion of the West Virginia Court cannot be sustained on the proposition that enforcement of the Florida decree in the instant case would do violence to legal principles of that State.

4. *The questions raised are of great general and public interest.*

The founding fathers in writing the Constitution intended

that the public Acts, Records, and Judicial Proceedings of each state should be respected in all other states of the Union. As applied to a judicial proceeding, they intended that a judgment in one state would be a finality on all questions raised or which could have been raised. Hence Article 4, Section 1 was written.

The rule which we are insisting on has been followed consistently wherever and whenever raised in the United States. The only variance has been where the court lacked jurisdiction of the parties or the subject matter; or where the judgment was obtained through fraud. The majority of the Court in West Virginia departs from and overrules these well established principles. It would have the judgments of sister states reviewed anywhere, and any time, and would make them subject to be overruled in any forum where presented. If this opinion should become the law of the land, Article 4, Section 1 of the Constitution would be nullified.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of Appeals of West Virginia should be reversed and this action remanded to the Circuit Court of Putnam County, West Virginia, with directions that it give full faith and credit to the decree of the Circuit Court of Dade County, Florida, and hear evidence in support of the petitioner's amended complaint and determine whether the transfers and conveyances complained of by her should be set aside.

Respectfully submitted,

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